

H-3109-1 - LEASING UNDER SPECIAL ACTS

Rights-of-Way Lease ProcessingA. Introduction

This Handbook is to be used in conjunction with Manual Section 3109 that provides the Bureau of Land Management (BLM) policy guidance concerning oil and gas leasing under the provisions of 43 CFR Subpart 3109. The Act of May 21, 1930, is the exclusive leasing authority for oil and gas underlying a right-of-way or easement issued pursuant to the general railroad right-of-way statute, the Act of March 3, 1875, and to rights-of-way issued pursuant to the Act of March 3, 1891. (See Champlin Petroleum Co., 68 IBLA 142 (1982).) The Department of the Interior has reviewed past decisions and opinions related to right-of-way leasing statutes and found that leasing in accordance with the 1930 Act is applicable to the 1875 law, to pre-1875 railroad grants, and to rights-of-way issued pursuant to the Act of March 3, 1891, for reservoirs and canals. No decision or opinion has clearly expanded the Act of May 21, 1930, to other types of rights-of-way or easements. The right-of-way statutes described above were all construed by the Supreme Court as granting base, or limited, fee title in the right-of-way holder, thus causing the Department to seek special oil and gas leasing authority. No other right-of-way statute has been so construed, and the need for special leasing authority never existed for any other type of right-of-way. The regulations in 43 CFR 3109.1, therefore, limit leasing under the Act of May 21, 1930, to rights-of-way that, in 1930, were considered to be a base, or limited, fee. Only rights-of-way or easements issued under the Act of March 3, 1875, and earlier railroad acts, or the Act of March 3, 1891, are to be processed under this section (see Solicitor's Memorandum in Appendix 1).

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B. Right-of-Way Lease ApplicationKeywords

No special application form is required to apply for the right to lease oil and gas under a right-of-way or easement covered by the 1930 Act. However, applicants should be encouraged to use the standard BLM-approved lease Form 3100-11. The application must be filed in the proper BLM office by the owner of the right-of-way or the transferee of the right-of-way owner. A \$75 filing fee must accompany the application. If the transferee files the application, a duly executed transfer/assignment must accompany the application (see example transfer in Illustration 1). The standard BLM-approved assignment Form 3000-3 normally should not be used or required for such a private party transfer/assignment between the right-of-way owner and the transferee. The application for a lease under the 1930 Act need not describe the lands involved by metes and bounds. Instead, the application for the applied-for lands needs to describe each legal subdivision through which the right-of-way or easement extends. (See Manual Section 3109.12A and 43 CFR 3109.1-2 for the specific application requirements.)

RIGHT-OF-WAY
LEASE
APPLICATION

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C. Receipt of Application

Responsible Official	Step	Action	Keywords
Receiving Official	1.	Receive the application and date/time stamp.	APPLICATION FILED
	2.	Assign a serial number and validate the \$75 filing fee.	
	3.	Prepare an accounting advice and attach the copies to the case file. Route the case file through Docket for ALMRS Entry.	
ALMRS Entry	4.	Enter the application into ALMRS Case Recordation. Since there is a separate case type in the DE 2912/2961 for a compensatory royalty agreement (CRA) under the 1930 Act, ensure that the correct case type is entered, i.e., 310911 for a 1930 Right-of-Way Act lease, or 318130 for a 1930 Act CRA.	AUTOMATED NOTATION
	4a.	For a 1930 Act lease application - Enter Action Date (MANDATORY ACTION CODE): Date application received; DE 1775 Action Code 001/DE 2910 Action Code 124; Action Remarks: Time application was received; General Remarks: Lands not subject to lease under the Mineral Leasing Act of 1920.	
	4b.	For 1930 Right-of-Way Act CRA - Enter Action Date (MANDATORY ACTION CODES): Date case established; DE 1775 Action Code 001/DE 2910 Action Code 387, and Date proposal received/case established; DE 1775 Action Code 344/DE 2910 Action Code 580; Action Remarks: CRA RECD.	
	5.	Send the case file to Title Records through Docket.	

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Responsible Official	Step	Action	Keywords
Title Records	6.	Draft the lease application on oil and gas plats. Copy the oil and gas plats and place in the case file. Send the case file to Adjudication through Docket.	RECORDS NOTED RIGHT-OF-WAY LEASE APPLICATION
Adjudication	7.	Check the lease application for the following:	RIGHT-OF-WAY LEASE APPLICATION REQUIREMENTS REVIEW
	7a.	Check that the law under which the right-of-way was granted was the Act of March 3, 1875, or an earlier railroad act, or was the Act of March 3, 1891. Check whether the right-of-way is abandoned. If the right-of-way was issued under one of the acts cited above, was patented without a reservation of the minerals and has been abandoned, the United States did not retain the minerals (See Appendix 1 and <u>Amerada Hess Corporation</u> , 24 IBLA 360, 83 I.D. 194 (1976).)	ABANDONED RIGHT-OF-WAY
	7c.	Was the application filed by the right-of-way owner or the owner's transferee? If it was filed by the owner's transferee, check that an executed transfer of the right to lease from the owner of the right-of-way is attached (see example in Illustration 1). The filing of a transfer/assignment that has been executed between the right-of-way owner and a transferee that is not accompanied by all the documents required under 43 CFR 3109.1-2 must be returned. The transfer/assignment is not to be filed in the case file in anticipation of a future 1930 Right-of-Way Act lease application being filed by the transferee.	TRANSFeree OF RIGHT-OF-WAY OWNER FILES APPLICATION

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Responsible Official	Step	Action	Keywords
	7d.	Check that the application details the facts of the ownership of the right-of-way and of the transfer/assignment (if the application is filed by a transferee); the development of oil and gas in adjacent or nearby lands; the location and depth of the wells; and the production and probability of drainage of the deposits in the right-of-way.	RIGHT-OF-WAY OWNERSHIP DETAILED FACTS OIL AND GAS DEVELOPMENT INFORMATION PROVIDED
	7e.	Check for any defects in the application, including defects in the legal land descriptions. Are any additional requirements needed? If so, prepare a notice of the additional requirements (see Illustration 2). If a transfer/assignment between the owner of the right-of-way and a transferee is filed, but is not accompanied by an application to lease, the transfer/assignment must be returned.	DEFECTS/ ADDITIONAL REQUIREMENTS FOR RIGHT-OF-WAY APPLICATION
	7f.	After the application has been determined to be properly filed and leasing of the lands is determined to be in the public interest, request a Field Office fluid mineral operations report (see Illustration 3).	
ALMRS Entry	8.	Enter Action Date: Date report requested; DE 1775 Action Code 152/DE 2910 Action Code 910; Action Remarks: Type of report and from whom.	
Field Office Operations	9.	Submit all the stipulations that need to be attached to the lease when it is issued.	FIELD OFFICE REPORT
	10.	Furnish a report to the State Office (SO) Adjudication as to any oil and gas development of adjacent lands, including unit and communitization agreements, and any special bonding requirements that are required.	

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Responsible Official	Step	Action	Keywords
Adjudication	11.	Receive report from Field Office fluid minerals operations staff.	
ALMRS Entry	12.	Enter Action Date: Date report received; DE 1775 Action Code 153/DE 2910 Action Code 911; Action Remarks: Type of report and from whom.	
Adjudication	13.	Notify the owner or lessee of the adjoining lands, and the owner/transferee of the right-of-way that filed the application, and allow them at least 30 days to submit a sealed bid for the amount or percent of compensatory royalty, or actual royalty, that each is willing to pay for the right to extract the oil and gas underlying the right-of-way (see Illustrations 4 and 5).	INVITATION TO BID
		<u>NOTE:</u> For the purposes of this step, the owner/lessee of the lands adjoining the railroad right-of-way includes all those landowners adjoining the sidelines of the railroad right-of-way as depicted by the BLM and/or railroad company maps. The term "adjoining landowners" means the holder of the oil and gas rights in the adjoining lands.	ADJOINING LANDOWNERS
ALMRS Entry	14.	Update case to indicate bid invitation and bid receipt using the current data standards.	AUTOMATED NOTATION
	14a.	Enter Action Date (MANDATORY ACTION CODE): Date invitation to bid requested; DE 1775 Action Code 190/DE 2910 Action Code 195; Action Remarks: Optional.	

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Responsible Official	Step	Action	Keywords
	14b.	Enter Action Date (MANDATORY ACTION CODE): Date bid received; DE 1775 Action Code 191/DE 2910 Action Code 267; Action Remarks: Total amount of high bid; General Remarks: Name of bidder (optional).	
Adjudication	15.	After receipt, send the bid(s) to the Fluid Mineral Resource Operations authorized officer for a recommendation to accept or reject each bid (see Illustration 6).	
Fluid Mineral Resource Operations	16.	Evaluate all bids and determine which bid is most advantageous to the United States.	BID EVALUATION
	17.	Send a report on the bid determinations to the SO Adjudication within 5 working days.	
ALMRS Entry	18.	Enter Action Date (MANDATORY ACTION CODE): Date bid accepted; DE 1775 Action Code 192; DE 2910 Action Code 196.	AUTOMATED NOTATION

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D. Issuance of Lease or Approval of Compensatory Royalty Agreement

Responsible Official	Step	Action	Keywords
Adjudication	1.	Upon receipt of the recommendation from the Fluid Mineral Resource Operations authorized officer, prepare the appropriate forms for transmittal to the lease applicant or the adjoining landowner, as appropriate.	
	2.	If a recommendation is made to enter into a CRA in lieu of leasing, reject the lease application (see Illustration 7).	
ALMRS Entry	3.	Enter Action Date (MANDATORY ACTION CODE): Date bid rejected; DE 1775 Action Code 193; DE 2910 Action Code 944; Action Remarks: Reason.	
Adjudication	4.	<u>Lease issued to the right-of-way owner or right-of-way owner transferee.</u> Prepare the BLM-approved lease Form 3100-11, describing the legal subdivisions through which the right-of-way or easement extends, limiting the acreage in the lease to those lands in the right-of-way or easement.	LEASE ISSUANCE
	4a.	Specify that, in accordance with 43 CFR 3103.2-2(a), the rental rate is \$1.50 per acre or fraction thereof for the first 5 years of the lease term and \$2 per acre or fraction thereof for all subsequent lease years (see Illustrations 8 and 9).	
	<u>NOTE:</u>	The automatic termination statement on lease Form 3100-11 does not apply to a 1930 Act lease and must be crossed out (see Illustration 9).	AUTOMATIC TERMINATION PROVISION NOT APPLICABLE

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Responsible Official	Step	Action	Keywords
	5.	<u>Agreement with the owner or lessee of adjoining lands to pay compensatory royalty.</u> Prepare the CRA document or request the Field Office fluid mineral operations staff to prepare the CRA document and forward it to the SO Adjudication.	COMPENSATORY ROYALTY AGREEMENT
	5a.	The royalty will be the amount bid and accepted by the BLM. No bid for less than 12½ percent shall be accepted. Thus, if the highest bid is less than 12½ percent, all the bids must be rejected. The bid evaluation may result in a determination that the United States will be better served by a lower bid (but at least 12½ percent) made by an adjoining lessee/landowner than a higher bid that was made by another adjoining lessee/landowner that is not in as good a position to extract the maximum amount of oil or gas reasonably feasible.	
	6.	Send the CRA forms, in triplicate, to the successful bidder for signature, indicating the amount or percentage of compensatory royalty that is due (see Illustration 8).	
	7.	If a bond is deemed necessary with the CRA, include a statement in the CRA that a bond is required (see Illustration 10).	BOND REQUIREMENT
	8.	Check that the required bond for the lease or CRA is submitted on the current BLM-approved bond Form 3000-4.	
	9.	Prepare the lease or CRA for signature by the authorized officer. The lease term or CRA will be for a period of 20 years in accordance with the 1930 Act. However, when unique circumstances are involved, a lease or CRA may be issued for a lesser period of time.	LEASE TERM OF 20 YEARS

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	9a.	Add an additional term to the CRA or lease Form 3100-11 as follows: "This lease [CRA] shall be in effect for a period of 20 years and so long thereafter as oil or gas is produced in paying quantities, subject to any unit or communitization agreement heretofore or hereafter approved by the BLM authorized officer, the provisions of said agreement to govern the lands subject thereto where inconsistencies with the terms of this lease [CRA] occur."	LEASE OR CRA IN EFFECT AS LONG AS OIL OR GAS IS PRODUCED IN PAYING QUANTITIES
	<u>NOTE:</u>	Although a maximum 20-year limitation is imposed by the statute, the BLM policy is to continue and extend such a lease or CRA at the end of its 20-year term for as long as actual or allocated production is being received and as long as the lease or CRA is capable of producing oil or gas in paying quantities. These 1930 Act leases or CRA's are often subject to a unit or communitization agreement and the terms of such agreement are to govern where inconsistencies with the terms of the lease occur. Thus, the lease or CRA may continue in force and its term will remain co-extensive with the life of the unit or CRA.	LEASE OR CRA SUBJECT TO UNIT OR COMMUNITIZATION AGREEMENT
	10.	Neither the Act of May 21, 1930, nor BLM policy allow extensions of a lease or CRA for diligent drilling, communitization or unit terminations, or for discontinuance of compensatory royalty payments (see Appendix 2).	LEASE EXTENSIONS NOT ALLOWED
	11.	A 1930 Right-of-way Act lease may be assigned or transferred to a party other than one originally eligible to be issued a right-of-way lease (see Appendix 3).	RECORD TITLE ASSIGNMENTS ALLOWED TO OTHER ENTITIES

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Responsible Official	Step	Action	Keywords
		The effective date of the lease or CRA is the first day of the month following signature by the authorized officer. However, if actual drainage has been documented, the effective date of the CRA would be the determinative date of such drainage.	EFFECTIVE DATE
	13.	Complete the accounting advice when the lease is issued, and send a copy to Accounts (see Illustrations 11 and 12). An accounting advice is not necessary for CRA's when drainage occurs. Instead, the Minerals Management Service (MMS), Data Management Division (DMD) is to be notified of the CRA in writing (see Illustration 13) → <i>Appendix</i>	ACCOUNTING ADVICE TO MMS-DMD
Accounts	14.	Send the accounting advice for the lease to the MMS-DMD.	<i>revised.</i> <i>cc</i>
Adjudication	15.	After the lease or CRA is signed, ensure that copies are sent to all interested parties. Send case file through ALMRS Entry to Title Records, then to Docket.	<i>cc</i> <i>ff</i>
		<u>NOTE:</u> The case file and ALMRS Entry are to be noted that upon expiration of lease, these lands are not available for competitive or noncompetitive leasing under the Mineral Leasing Act of 1920.	
ALMRS Entry	17.	Update case to indicate issuance of lease or CRA using the current data standards (see Illustration 14).	AUTOMATED NOTATION
		<u>NOTE:</u> Appendix 4 contains a listing of key action codes from the data standards that are to be used in ALMRS Case Recordation for 1930 Right-of-Way Act leasing actions.	

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17a. Enter Action Date (MANDATORY ACTION CODE): Date lease signed/ CRA approved; DE 1775 Action Code 176/DE 2910 Action Code 237 (for lease); OR DE 1775 Action Code 176/DE 2910 Action Code 334 (for CRA).

Enter Action Date (MANDATORY ACTION CODE): Effective date of lease/CRA; DE 1775 Action Code 225/DE 2910 Action Code 868.

Enter Action Date (MANDATORY ACTION CODE): Enter appropriate royalty rate for lease or CRA; DE 1775 Action Code 102, 103, or 108/DE 2910 Action Code 530, 531, or 536; Action Remarks: If DE 1775 Action Code 108/DE 2910 Action Code 536, indicate specific royalty rate.

17d. Enter Action Date (MANDATORY ACTION CODE): Date lease/CRA expires; DE 1775/2910 Action Code 763; Action Remarks: Optional.

NOTE: If lease/CRA is in production status, do not enter DE 1775/2910 Action Code 763.

Title Records	18. Note on oil and gas plats and historical index. Return case file to Docket.	RECORDS NOTATION
Docket	19. File case file with active cases.	
Adjudication	20. If the lease/CRA is not in producing status at the end of its 20-year term the application process must be initiated for any new lease or CRA to be issued to a qualified party according to these procedures in Sections IC and ID.	

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E. Leases Issued Under the Mineral Leasing Act of 1920
on Lands Available Only Under the 1930 Right-of-Way Act

Responsible Official	Step	Action	Keywords
Adjudication	1.	If a lease describing lands available for leasing only under the 1930 Act has been issued under the Mineral Leasing Act of 1920, it is a nullity. Cancel the 1920 lease. (See <u>William L. Ahls</u> , 85 IBLA 66 (1985).)	LEASE CANCELLATION
	2.	A lease issued under the Mineral Leasing Act of 1920 Act does not include the oil and gas deposits underlying a railroad right-of-way that crosses the leased area (if the right-of-way was granted under the Act of March 3, 1875, or an earlier railroad act, or was granted under the Act of March 3, 1891) even though the 1920 lease does not expressly except such deposits from its coverage. (See <u>Champlin Petroleum Co.</u> , 68 IBLA 142 (1982), and <u>Oil and Gas Leasing on Federal Lands</u> , Chapter 18, "Leasing Under Rights-of-Way," by Lewis Edwin Hoffman (1957).)	

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